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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/925,758

08/09/2001

Lawrence Oskielunas

ACNR-D01-195/01356-00/US

4841

89713

7590

06/23/2010

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EXAMINER

NGUYEN, NGA B

ART UNIT

PAPER NUMBER

3684

MAIL DATE

DELIVERY MODE

06/23/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/925,758	Applicant(s) OSKIELUNAS ET AL.	
	Examiner Nga B. Nguyen	Art Unit 3684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-37, 39-48, 52-73 and 75-107 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-37, 39-48, 52-73 and 75-107 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 23, 2009 has been entered.
2. Claims **1-10, 12-37, 39-48, 52-73, and 75-107** are pending in this application.

Response to Arguments/Amendment

3. Applicant's arguments with respect to claims 1-10, 12-37, 39-48, 52-73, and 75-107 have been fully considered but are moot in view of new grounds of rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-10, 12-37, 39-48, 52-73, and 75-107 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "said step of receiving offers data services" in the step of "*checking...*" (e.g. claim 1). There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-10, 12-37, 39-48, 52-73, and 75-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle, U.S. Patent No. 6,269,157, in view of Mikurak, U.S. Patent No. 7,716,077, and further in view of Luft et al (hereinafter Luft), U.S. Patent No. 7,016,300.

Regarding to claim 1, Coyle discloses a method of auctioning data services in a network environment including an exchange system including a supplier list having at least one supplier and a buyer list having at least one buyer, the method comprising:

receiving, by the exchange system, a service request from a buyer for data services; and incentive data from a supplier on the supplier list to supply the data services (*column 26, line 60-column 27, line 35, Moderator receives request for future service (RFS) from buyers; column 7, lines 45-60, Moderator receives bids from carriers; column 11, lines 20-45*);

determining, by the exchange system, a selected supplier from the supplier list based on the incentive data (*column 7, lines 63-67, Moderator processes bids to prioritize them for each route*);

creating routing data by the exchange system for the data services to be routed through the selected supplier (*column 8, lines 1-10*); and

routing, by the exchange system, the data services through the selected supplier using the routing data created at the exchange system (*column 8, lines 10-45*); and

whereby data services are provided in an incentive-driven environment, allowing flexibility in supplier relationships for the buyer and providing improved utilization and yield management opportunities for the selected supplier (*column 2, lines 1-65*).

Coyle does not disclose tracking, by the exchange system, bandwidth utilization for the supplier on the supplier list; and checking, by the exchange system, whether the receive incentive data provided by the supplier on the supplier list in said step of receiving offers data services extending beyond the available bandwidth of the supplier on the supplier list by reviewing the received incentive data and the tracked bandwidth utilization, and in determining the selected supplier, ensuring that the supplier on the supplier list does not oversell the available bandwidth. However, Mikurak discloses tracking, by the exchange system, bandwidth utilization for the supplier on the supplier list; and checking, by the exchange system, whether the receive incentive data provided by the supplier on the supplier list in said step of receiving offers data services extending beyond the available bandwidth of the supplier on the supplier list by reviewing the received incentive data and the tracked bandwidth utilization (*column 278, line 35-column 279, line 2, automatically identifying the first user's unused bandwidth by monitoring bandwidth use of the first user to determine an amount of bandwidth used by the first user; the amount of unused bandwidth is determined by subtracting the amount*

Art Unit: 3684

of bandwidth used by the first user from the total amount of bandwidth allocated to the first user; A response from the first user indicating an amount of unused bandwidth that the first user wants to sell is received; the availability of the amount of unused bandwidth that the first user wants to sell is verified). Luft discloses in determining the selected supplier, ensuring that the supplier does not oversell the available bandwidth (*column 16, lines 30-50, the ring provider offers a guaranteed minimum bandwidth that requires the bandwidth of the layer 2/3 pipes on the ring not be oversold*). Therefore, it would have been obvious to one with ordinary skill in the art to modify Coyle's to adopt the features taught by Mikurak's and Luft's above, for the purpose of ensuring that the supplier does not oversell the available bandwidth.

Regarding to claim 2, Coyle further discloses wherein data services include at least one of data transportation services and data application service (*column 7, lines 30-45*).

Regarding to claims 3-7, Coyle further discloses wherein the exchange system includes a moderator system, wherein the moderator system includes a moderator computing system, wherein the exchange system includes switches, wherein the exchange system includes a routing system to provide data transportation services for the buyer through the selected supplier, and wherein the routing system is configured automatically by the exchange system (*column 7, lines 45-63*).

Regarding to claim 8, Coyle further discloses wherein creating includes automatically generating routing data (*column 8, lines 10-35*).

Regarding to claims 9-10, Coyle further discloses wherein the service request

Art Unit: 3684

specifies a ceiling price for the data transportation services and wherein the buyer specifies whether the ceiling price is made available to the supplier (*column 27, lines 20-50*).

Regarding to claims 12-13, Coyle further discloses wherein the routing data includes first and second endpoints, wherein the first and second endpoints include first and second ports respectively (*column 9, lines 40-65*).

Regarding to claim 14, Coyle further discloses wherein the routing data includes a trunk line specification (*column 9, lines 40-65*).

Regarding to claims 15-16, Coyle further discloses wherein the service request includes a specified closing time for the receipt of incentive data from the supplier and setting by the exchange system a closing time for receiving the incentive data (*column 11, lines 45-65*).

Regarding to claim 17, Coyle further discloses wherein determining includes determining by the buyer the selected supplier based on the incentive data (*column 27, lines 20-50*).

Regarding to claim 18, Coyle further discloses wherein determining includes determining by a moderating system in the exchange system the selected supplier (*column 7, lines 45-65*).

Regarding to claim 19, Coyle further discloses wherein incentive data includes at least one of economic incentive data, supplier information, and duration of the data transportation services (*column 11, lines 45-65*).

Regarding to claim 20, Coyle further discloses wherein the incentive data

Art Unit: 3684

includes a time period for which the incentive data is valid (*column 11, lines 45-65*).

Regarding to claim 21, Coyle further discloses wherein the supplier information can be conditionally provided to the buyer (*column 11, lines 20-45*).

Regarding to claim 22, Coyle further discloses providing information regarding the selected supplier to the supplier list (*column 27, lines 35-50*).

Regarding to claim 23, Coyle further discloses providing all or a subset of the incentive data to all or a subset of the supplier list or buyer list (*column 28, lines 3-20*).

Regarding to claim 24, Coyle further discloses providing a view of all or a subset of the service requests and incentive data for closed transactions to all or a subset of the supplier list or buyer list (*column 28, lines 55-65*).

Regarding to claim 25, Coyle further discloses providing a view includes providing a view of all or a subset of the open service requests and open incentive data to all or a subset of the supplier list or buyer list (*column 28, lines 55-65*).

Regarding to claim 26, Coyle further discloses wherein open service requests and open incentive data includes partially unfulfilled service requests and incentive data (*column 9, lines 10-17*).

Regarding to claim 27, Coyle further discloses committing the service request after a specified amount of time beyond which the buyer cannot revoke the service request thereby giving the seller a guaranteed sale to compete for (*column 28, lines 35-55*).

Regarding to claim 28, Coyle further discloses receiving resell information as derivative routing data (*column 26, lines 35-40*).

Regarding to claim 29, Coyle further discloses wherein data services include analog and digital information (*column 7, lines 19-22*).

Regarding to claim 30, Coyle further discloses defining a member profile by the buyer or supplier in the exchange system by entering parameters that allow the buyer or supplier to define selection criteria; and wherein determining a selected supplier includes determining a selected supplier from the supplier list based on the incentive data and by applying the buyer's selection criteria against the supplier list and each supplier's selection criteria against the buyer (*column 27, lines 35-50*).

Regarding to claim 31, Coyle further discloses defining a member profile includes entering parameters that allow the buyer or supplier to define selection criteria that includes at least one of supplier identifications, credit limits, and type of transmission line (*column 28, lines 3-20*).

Regarding to claim 32, Coyle further discloses providing, by the exchange system, a limited view of the buyer list or seller list based on the member profile (*column 28, lines 55-65*).

Regarding to claim 33, Coyle further discloses wherein defining a member profile includes limiting the supplier list through which the selected supplier is determined (*column 27, lines 35-50*).

Regarding to claim 34, Coyle further discloses blocking, by the exchange system, redefining the member profile to include buyers or sellers limited by the member profile for a protection interval in order to prevent use of the member profile to uncover identities of other companies (*column 28, lines 3-20*).

Regarding to claim 35, Coyle does not disclose querying the exchange system by the at least one supplier or the at least one buyer to search for specific service request parameters or incentive data parameters; whereby the at least one buyer and the at least one supplier can facilitate the submission of service requests and incentive data. However, providing a supplier to search for specific service request from a buyer or a buyer to search for specific service from a seller is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art to modify Coyle's to incorporate the well-known features above, for the purpose of providing more convenient for the supplier/buyer to find the right service request/service they desired.

Regarding to claim 36, Coyle further discloses wherein the exchange system includes a billing system (*column 30, lines 60-67, Billing Computer*).

Regarding to claim 37, Coyle further discloses notifying the buyer list or supplier list of a new buyer or supplier (*column 29, lines 15-23*).

Claims 39-48 and 52-73 contain similar limitations found in claims 1-10 and 12-37 above, therefore, are rejected by the same rationale. Moreover, Coyle does not disclose wherein the routing data specifies first and second ports or specifies a trunk line. However, specifying first and second ports or a trunk line for routing data is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art to modify Coyle's to incorporate the well-known features above, for the purpose of specifying first and second ports or a trunk line for routing data in order to route the data to the specific supplier.

Art Unit: 3684

Claims 75-107 contain similar limitations found in claims 1-10 and 12-37 above, therefore, are rejected by the same rationale. Moreover, Coyle further discloses the service request including a specified closing time for receipt of incentive data from the supplier (*column 12, lines 30-35, the bid's effective time*).

Conclusion

8. Claims **1-10, 12-37, 39-48, 52-73, and 75-107** are rejected.
9. The prior arts made of record and not relied upon are considered pertinent to applicant's disclosure:

Byers (US 6,975,594) discloses system and method for providing controlled broadband access bandwidth.

Patel et al (US 7,043,225) disclose method and system for brokering bandwidth in a wireless communications network.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Friday from 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

Art Unit: 3684

11. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450

Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300 (for formal communication intended for entry),

or

(571) 273-6796 (for informal or draft communication, please label
“PROPOSED” or “DRAFT”).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/
Primary Examiner, Art Unit 3684

Application/Control Number: 09/925,758

Page 12

Art Unit: 3684

June 15, 2010